

**BEFORE THE
EMPLOYMENT APPEAL BOARD
Lucas State Office Building
Fourth floor
Des Moines, Iowa 50319**

CAITLIN H RAFTER

Claimant

and

FAREWAY STORES INC

Employer

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HEARING NUMBER: 20BUI-03592

**EMPLOYMENT APPEAL BOARD
DECISION**

NOTICE

THIS DECISION BECOMES FINAL unless (1) a **request for a REHEARING** is filed with the Employment Appeal Board within **20 days** of the date of the Board's decision or, (2) a **PETITION TO DISTRICT COURT** IS FILED WITHIN **30 days** of the date of the Board's decision.

A REHEARING REQUEST shall state the specific grounds and relief sought. If the rehearing request is denied, a petition may be filed in **DISTRICT COURT** within **30 days** of the date of the denial.

SECTION: 96.4-3, 96.19-38-B

DECISION

UNEMPLOYMENT BENEFITS ARE DENIED

The Claimant appealed this case to the Employment Appeal Board. The members of the Employment Appeal Board reviewed the entire record. The Appeal Board finds the administrative law judge's decision is correct. With the following modification, the administrative law judge's Findings of Fact and Reasoning and Conclusions of Law are adopted by the Board as its own. The administrative law judge's decision is **AFFIRMED** with the following **MODIFICATION**:

The Board finds the following additional facts:

This Claimant worked only part-time for the Employer.

The records of the Department establish the following uncontested monetary record for this Claimant. The original claim date in this case is March 22, 2020. This makes the Claimant's base period the fourth quarter of 2018, the first quarter of 2019, the second quarter of 2019, and the third quarter of 2019. The Claimant has the following wages in that period:

Employer	Q4, 2018	Q1, 2019	Q2, 2019	Q3, 2019
Fareway	1564.6	1551.9	689.85	338.1
Hand in Hand	495.9	137.25		
Precious M.			2333.9	2854.95

Basis				343.69
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Total Wages: \$10,310.14 Credits (=1/3 wages): \$3,436.71 WBA [0 dependents]: \$153

The Claimant worked part-time for Fareway and left work at that job on March 7, 2020.

The Board strikes the Reasoning and Conclusions of Law following “(emphasis added)” on page 3 of the Administrative Law Judge decision, and adds the following in lieu thereof:

While we affirm the denial of benefits, we do not affirm the denial of *all* benefits. The Administrative Law Judge found that by moving to a different city the Claimant became not able and available for work, and thus would be denied benefits, presumably until she moved back. We do not think this is how the law shakes out.

When a worker leaves work and moves to a different city that is disqualifying under Iowa Code §96.5(1) – as a “voluntary leaving.” Such a disqualification is lifted once the worker earns requalifying wages (10 times her weekly benefit amount). If we treated moving out of town as an availability issue the worker would be not be able to collect benefits at all until, we suppose, she moved back. This does not make sense, and is not how the law is set up.

Here we are dealing with a part-time worker. First, of all, even if this Claimant were “not available to the employer” that employer is only one of several in the base period of this claim. So it would not make sense to keep her from drawing on *all* the employers’ credits. But we do not follow an availability theory. We merely observed that the outcome would be similar if we did so. Second, and to the point, workers who are disqualified for a separation from part-time supplemental work may be eligible to receive reduced unemployment insurance benefits, provided they have sufficient wage credits from other employers to be monetarily eligible and provided they are otherwise eligible. Iowa Code §96.5(12). In no event will such an employer’s account be assessed for benefits paid to the claimant. Further, wage credits accrued during the Fareway employment (if any) shall not be considered in determining benefits for the claimant until the claimant has worked in an been paid for insured work equal to ten times her weekly benefit amount.

We find that this Claimant is disqualified from drawing on the Fareway credits because she voluntarily left work without good cause attributable to the Employer. *See Des Moines Ind. Comm. v. Dept. of Job Service*, 376 NW 2d 605, 611 (Iowa 1985) (Denying benefits based on quit because “[a]lthough claimant’s move in this case may not have been entirely his choice, such move was not attributable to the school district.”) She can still draw benefits but just not on the Fareway credits.

Our calculations indicate that the Claimant remains monetarily eligible if the Fareway wages are excluded from her base period. Specifically, it appears that her weekly benefit amount will decrease from \$153 to \$139 and that her maximum benefit amount will decrease from \$3,436.71 to \$2,055.23. If she requalifies following her quit at Fareway (by earning at least \$1,530 in covered wages since 3-7-20) then the amounts for this benefit year will be restored. We note that the Claimant has collected \$1,224 in regular state benefits over eight weeks, with seven of those weeks also receiving \$600 in FPUC (\$4,200) total. By lifting the disqualification and reducing the benefit amounts, it appears her new amounts will be to *receive* an additional \$239 in back state benefits, and *receive* an additional \$1,800 in back benefits of FPUC. None of this will be charged to the Employer. Although we can do the calculation we nevertheless we will refer the matter to Iowa Workforce to make the official

calculation. Again, one way or the other, the Employer will not be charged.

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The decision of the Administrative Law Judge is **MODIFIED IN THE CLAIMANT'S FAVOR**. The Claimant is allowed benefits to the extent that she is eligible based on credits earned with other employers, and only denied the ability to draw on credits earned with Fareway. FPUC is payable on these benefits.

Accordingly, the Board also **REFERS** this matter to the Iowa Workforce Development, Benefits Bureau to address whether the Claimant is otherwise eligible for benefits based on wage credits other than those from Fareway, and if so then for a recalculation of benefits payable based on this decision.

The Claimant should continue to file weekly claims in the meanwhile.

Ashley R. Koopmans

James M. Strohman

Myron R. Linn

RRA/frv